Bail Slip

The Appellants/Accused 1 & 2 namely B.Ramachandran and S.S.Abdul Hameed who are released on bail in Crl.M.P.No.3792/2000 in Crl.A.No.553/2000 dated 04.07.2000 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.553 of 2000

1.B. Ramachandran
2.S.S. Abdul Hameed

.. Appellants/Accused 1 & 2

Vs.

State rep by
The Inspector of Police,
Special Police Establishment
Central Bureau of Investigation,
Anti-Corruption Branch,
Chennai.
(Cr.No. RC 56(A)/97)

.. Respondent/Complaint

Prayer: This appeal has been preferred under section 374 Cr.P.C. against Judgment dated 08.06.2000, in C.C.No.41 of 1998 on the file of the Principal Special Judge for CBI Cases, Chennai.

For Appellants : Mr.M. Venkatraman,
Senior Counsel for
Mr.V.Krishna Kumar

For Respondent : Mr.N.Chandarasekaran,
Spl. Public prosecutor for CBI Cases.

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JUDGMENT

This appeal has been preferred against the judgment in C.C.No.41 of 1998 on the file of the Principal Special Judge for CBI Cases, Chennai.

2. On the basis of Ex.B3, the complaint, PW.4 laid trap against the accused A1 and A2, who are the officials of Income Tax Department.

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On the basis of the trap conducted by the Income Tax officials on the supervision of PW.4, a charge sheet was filed by the Investigation officer PW.7 against A1 and A2 under section 120B I.P.C r/w section 7 of Prevention of Corruption Act and under section 13(2) r/w section 13 (1)(d) of Prevention of Corruption Act, 1988.

3. The case was taken on file by the Special Judge for CBI cases, Madras as C.C.No.41 of 1998 . On appearance of the accused on summons, copies under Section 207 of Cr.P.C were furnished to the accused and when the charges framed against the accused were explained to them, the accused pleaded not guilty.

4. On the side of the Prosecution P.W.1 to P.W.7 were examined and Ex.P.1 to Ex.P.16 were exhibited and M.O.1 to M.O.5 were marked.

5. PW.1 Thiru. T.L. Mani, is the Commissioner of Income-Tax, Chennai. During the relevant period, who had issued order of sanction of prosecution against the accused under Ex.P2. According to PW.1, A1 Ramachandran was working as Income Tax Officer, Special Ward, incharge of survey in New cases in (Circle 4) and Ex.P1 is the rules confirming the powers of appointing authority for Group B and Group C officers. A2, Abdul Hameed was working as Inspector of Income Tax and he was a Group C officer of the Income Tax Department, whereas A1 is the Group B officer. PW.1 would depose that after going through the documents mentioned in Ex.P2 sanction order and after getting himself satisfied with regard to the prima facie case has been made out he issued Ex.P2, sanction order against A1 and A2.

6. PW.2, Vijayan would depose that he is running a finance company by name Arasan Finance at Wannarapettai and there are eight shareholders to the said company and that on 22.8.1997 A2 came to Arasan finance and informed that there is a complaint received against Arasan finance in the Income Tax Department and when he enquired about the details of the complaint, A2 asked him to go to Kannammai building and to meet A1 Ramachandran, an Income Tax Officer at seventh floor. On 22.8.1997, he along with three other partners of Arasan finance went to Kannammai building and met A1 and A2 and he was also identified A1 in the court, who had informed him that a complaint has been received against the said Arasan Finance regarding evasion of payment of income tax and A1 had demanded Rs.12,000/- (Rupees twelve thousand) only as an illegal gratification to close the said file and out of Rs.12,000/- (Rupees twelve thousand) only A1 demanded Rs.10,000/- (Rupees ten thousand) only and A2 is to be given the balance of Rs.2,000/- (Rupees two thousand) only. PW.2 had refused to pay the said bribe amount to A1 and A2. A1 threatened that if the demanded amount was not given, he will search the finance company and his house and also will seal the house and the company. PW.2 informed him that his inability to go to Kannammai building on 26.8.1997. So, A1 asked him to come on 1.9.1997 instead of 26.8.1997

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. Since, they could not turn up on 1.9.1997, A2 came to his house on 2.9.1997 and asked him to go and meet A1 on 9.9.1997 at about 3.00 p.m with the amount. Since PW.2 is not willing to pay any illegal gratification, he went to Shastri Bhavan on 9.9.1997 and preferred Ex.P3, complaint to the Superintendent of Police, CBI, who was going through the complaint, sent PW.4 Premanand and directed him to take necessary action on the complaint, Ex.P3. After a preliminary enquiry, PW.4 had asked him (PW.2) to come in the afternoon by 2.30 p.m and also instructed him to bring Rs.5,000/- (Rupees five thousand) only. In the afternoon, he along with his other partners went to the office of Premanand (PW.4) where he saw PW.3, Veeraselvam. PW.3 Veeraselvam belongs to other department. PW.4 had read over the complaint to Veeraselvam and also brought a glass tumbler and prepared Sodium Carbonate solution. It was a colourless solution. When Muralidharan was asked to dip his fingers in the said solution, the said solution maintained its colourless nature and that he handed over Rs.5000/- to Premanand, who smeared phenolphthalein powder and asked Muralidharan to handle the said currency notes. After touching those notes, Muralidharan was asked to dip his hands inside the Sodium Carbonate Solution. When he did so, the solution became pink in colour. Afterwards, PW.4 Premanand placed the currency notes into his shirt pocket and informed him (Pw.2) to hand over the said currency notes to A1 and A2 on demand and till then he advised him not to touch the said currency notes which were put by him in his shirt pocket. PW.3, Veeraselvam was also asked to accompany him and to stay with him to watch the proceedings. PW.4 has preferred a Mahazar Ex.P4 for what had transpired in his office in which he has also signed and the said mahazar was prepared by 3.30 p.m and he along with other witnesses and other C.B.I officials, went to Kannammai building in two cars at about 4.00 p.m on the same day and that they reached the said building at about 4.30 p.m. PW.2 and PW.3 went to seventh floor of the building where the office of A1 is situate. When they entered the office room of A1 Ramachandran, Ramachandran (A1) enquired about PW.3 Veeraselvam. PW.2 introduced PW.3 as his Accountant. A1 asked PW.3 to stay away from the office and asked about the other partners namely Soundarapandi, Ponraj, Mahalingam, Ramanathan of PW.2. At that time, A2 also came there and A1 enquired whether PW.2 has brought the amount demanded by him for which PW.2 informed him that he had brought only Rs.5,000/- (Rupees five thousand) only and assured to pay the balance within one or two days. Immediately, he took over Rs.5,000/- (Rupees five thousand) only from his shirt pocket and handed over the same to A1. After counting the same, A1 put the amount into his shirt pocket and within two minutes the C.B.I officials entered into the room and caught hold of A1. After the arrival of Premanand (PW.4), A1 was arrested and A1 was asked to dip his fingers in the Sodium Carbonate Solution and when he dipped his right hand into the solution, the solution became pink in colour. Another glass of Sodium Carbonate Solution was prepared and Ramachandran was asked to dip his left hand into it. When he dipped

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his left hand into the solution, the colour of the solution turned pink. Both the bottles containing the Sodium Carbonate Solution were sealed and marked as 'A' and 'B' respectively. PW.4 asked Ramachandran, A1 to hand over the bribe amount to PW.3, and A1 acted accordingly. PW.3 compared the currency note numbers with that of the numbers noted in the Mahazar and informed that both the numbers tally with each other. M.O.1 series are the ten notes of Rs.500/- denomination each. When the shirt of Ramachandran was also dipped in the Sodium Carbonate Solution , the solution turned pink in colour. The said solution was also sealed and marked as 'C'. The shirt was also packed and sealed and marked with letter 'D' and a mahazar, Ex.P5 was also prepared for the recovery of the above said articles in which he has also signed as a witness. A copy of Ex.P5 mahazar was also furnished to A1 and A2.

7. PW.3 is an Enforcement Officer in the Directorate of Enforcement, at Calicut, Kerala in the year 1996-1998. On the date of deposition, he was working as Senior Personal Assistant to the Deputy Director at Enforcement Directorate at Chennai. On 9.9.1997 at about 1.30 p.m, he was called by the Deputy Director of Enforcement Directorate and asked him to go to C.B.I office, Chennai and to meet Premanand, Inspector of C.B.I and accordingly, at about 2.15 p.m on the same day, he went to C.B.I office and met Inspector Premanand (PW.4).

8. When, he went there a person by name Muralidharan belonging to C.P.W.D office was also present there along with D.S.P. Ravikumar, D.S.P. Ramasamy and Inspector Hari Om Prakash and two constables and that PW.4 had introduced him to other officials and read over the complaint given by Vijayan (PW.2). In the said complaint, he stated that PW.2 is one of the partners of the Arasan Finance Company and at Kannammai building, the income tax officials had demanded Rs.10,000/- (Rupees ten thousand) only as illegal gratification for A1 and another Rs.2,000/- (Rupees two thousand) only for A2. Premanand was explained to him that the C.B.I officials have formed a trap to catch the culprits red handed and for the trap he asked him to be a witness and he has also demonstrated the Sodium Carbonate Solution test to him and Muralidharan was asked to dip his hand in the Sodium Carbonate Solution. When he dipped there was no colour change in the solution. But he has asked PW.2 to hand over Rs.5,000/- (Rupees five thousand) only brought by him and PW.2 also handed over ten notes of Rs.500/- denomination each amounting to Rs.5,000/- (Rupees five thousand) only to him and on which PW.4 smeared the phenolphthalein powder and asked Muralidharan to handle the same and afterwards asked Muralidharan to dip his hands in the Sodium Carbonate Solution. While Muralidharan dipped his hand into the Sodium Carbonate solution, it turned pink in colour and asked Vijayan to keep the said amount of Rs.5,000/- (Rupees five thousand) only with an instruction that he shall not touch the same till he hand over the same to the accused on demand. PW.4 has

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further requested him (PW.3) to accompany Vijayan to A1's office and to watch the proceedings and further instructed that as soon as A1 received the bribe amount, he has asked to give signal by touching his head repeatedly. Ex.P4, Mahazar was prepared in which the currency note numbers were noted in his presence. Vijayan was having only Rs.5,000/- (Rupees five thousand) only at that time and that he was having Rs.70/- in his pocket besides an identity card and a pen. After the demonstration was over, both Muralidharan and other officials have washed their hands and the test kit was taken in a suitcase by the C.B.I officials. The kit contained three glass tumblers, the Sodium Carbonate Powder and other stationeries like seal, wax etc. Phenolphthalein powder was kept in the office itself. The said demonstration was over by 3.30 p.m on the same day. PW.4 asked the partners of the PW.2's Finance company to go to income tax office at Kannammai building and the C.B.I officials and the witnesses went in two separate cars to Kannammai building and the car was stopped at Model School, near Kannammai building and he was asked to go along with Vijayan to seventh floor at Kannammai building wherein the Income Tax Office is housed. He and Vijayan went to the office of Ramachandran. The other shareholders stayed in the ground floor. When they met Ramachandran (A1), Ramachandran asked "Who he is ? " pointing out him (PW.2) Vijayan introduced PW.3 as his accountant. Immediately, A1 asked him to stand outside. Vijayan and Ramachandran alone were present in the room and he (PW.3) was standing in the corner of the room and the door was kept ajar and that PW.3 was able to see A1 and Vijayan from the place where he stood. As per the instruction of A1, PW.2 also brought the other partners of his finance company. By that time, A2 was also present there. A1 enquired the partners of the finance company, about the business and about the maintaining of the accounts. PW.2 Vijayan informed A1 that the accounts have been maintained properly in his finance company. Thereafter, A1 asked Vijayan and his partners, whether they have brought Rs.12,000/- (Rupees twelve thousand) only. Vijayan (PW.2) informed that he has brought only Rs.5,000/- (Rupees five thousand) only and the balance of Rs.7,000/- (Rupees seven thousand) only will be given within one or two days. A1 asked Vijayan to hand over Rs.5,000/- (Rupees five thousand) only to him. Immediately, Vijayan took Rs.5,000/- (Rupees five thousand) only from his shirt pocket and handed over the same to A1 Ramachandran. After counting the currency notes, A1 placed the amount in his shirt pocket. Immediately, pW.3, who watched the same from outside the room of A1 gave signal by touching his head repeatedly. Immediately, C.B.I officials came to the seventh floor. The team consists of PW.4, Muralidharan and another witness (PW.3) and they all went to A1's room. After introducing himself PW.4, Premanand , Inspector of Police, also introduced other officials and witnesses to A1. On hearing this, A1 became nervous and spell bound. The C.B.I officials arrested A1. PW.4 prepared Sodium Carbonate Solution and asked A1, Ramachandran to dip his right hand in it. When he did so, the

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solution became pink in colour. The said solution was sealed and marked as 'A', which is M.O.2, in which he and Muralidharan have signed as a witness. In another glass tumbler, PW.4 prepared Sodium Carbonate Solution and asked A1, Ramachandran to dip his left hand into it. When A1 dipped his left hand in the said solution, it turned pink in colour. After affixing his seal, it was marked as 'B'by PW.4, in which he and Muralidharan have signed as witness. M.O.3 is the said solution. PW.4 asked Ramachandran to hand over the bribe amount received by him from PW.2 to Pw.3 and that he collected the said amount and counted the same and also checked the currency note numbers with that of the numbers noted in the mahazar and found tallied. The said currency notes are M.O.1 series. Afterwards, PW.4 asked A1 to remove his shirt and the shirt pocket was dipped in another Sodium Carbonate Solution which also turned pink in colour. The said bottle of Sodium Carbonate Solution was also sealed and marked as 'C' in which also he and Muralidharan have signed as witnesses. M.O.4 is the said bottle. The shirt of Ramachandran was packed and sealed and marked as 'D' in which also he and Muralidharan have signed as witnesses. M.O.5 is the parcel containing the shirt of A1. M.O.6 is the specimen seal. Another shirt was provided to A1. On the personal examination of A1, it was found that in his pocket a black colour purse containing Rs.1,500/- (Rupees one thousand and five hundred) only. He also possessed an identity card and a telephone diary. The purse containing Rs.1,500/- (Rupees one thousand and five hundred) only, identity card and diary were returned to A1, Ramachandran. The shirt pocket of A2 was also searched and a sum of Rs.60/-, an identity card and some coins were found in his shirt pocket besides his spectacles. The file kept on the table of Ramachandran was also seized by PW.4. PW.3 has also signed in each and every page of the said file, which contained 17 pages. Ex.p7 is the said file, which contained the complaint against Arasan Finance. A recovery mahazar was prepared under Ex.p5, in which also he , Vijayan and other shareholders of the finance company of PW.2, and C.B.I officials have signed. Both A1 and A2 were released on bail in the income tax office itself. PW.4, the Inspector of police, C.B.I would depose that from 1993 November till 14th February 1999, he was working as Inspector of C.B.I at Chennai. On 9.9.1997 at about 10.30 a.m, Tmt. Lakshmi Prasath, I.P.S, the Superintendent of Police, CBI called him and informed that from PW.2, a partner of Arasan Finance, the income tax officials by name Ramachandran, A1, and Abdul Hameed, A2 have demanded illegal gratification and on that score PW.2 has preferred a complaint to CBI and asked him to enquire into the same. Ex.P3 is the complaint handed over by the Superintendent of police. After ascertaining that what is stated in the complaint are true, he had registered a case in R.C. 56(A)/97 under section 7 of Prevention of Corruption Act, 1988. Ex.P9 is the First Information Report. To catch the accused red handed, he formed a trap with the help of independent witnesses from Enforcement Office and also C.P.W.D. and made arrangements to get

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Veeraselvam from Enforcement Office and Muralidharan from C.P.W.D. Office at Shastri Bhavan. PW.2 also informed him that he is having only Rs.5,000/- (Rupees five thousand) only and not Rs.12,000/- (Rupees twelve thousand) only as demanded by the accused and he asked PW.2 and other witnesses to be present on 9.9.1997 at about 2.30 p.m in his office. On 9.9.1997, the above said witnesses and other CBI officials and PW.2 and his partners of the Arasan finance company were present in his office and in their present, he read over the complaint in detail and also demonstrated the phenolphthalein test Sodium Carbonate test before them (as spoken to by PW.3 in his deposition) and after preparing a mahazar, Ex.P4 for what had transpired in his office after noting the currency note numbers in Ex.P4, asked the witnesses and PW.2 to go to Kannammai building where the income tax office is housed and for the purpose of meeting A1, Ramachandran in his office. He and other witnesses and CBI officials went in another car and waited in third and fourth floor of Kannammai building respectively. PW.2 and another witness Veeraselvam were asked to go and meet A1 in his office and Veeraselvam was instructed to give signal by touching his head repeatedly soon after A1 received the bribe amount and that at about 5.10 p.m from the seventh floor Veeraselvam had signalled by combing his hair repeatedly. On seeing the signal, he and other CBI officials went to the seventh floor and entered into the room of A1 and after introducing himself to A1, he prepared Sodium Carbonate Solution in a tumbler and asked the accused A1 to dip his hand in the said solution and doing so, the colour of the solution turned pink and the same was marked as 'A'. M.O.2 is the said bottle. He has prepared another Sodium Carbonate Solution in another tumbler and asked A1 to dip his left hand in it. While doing so, the colour of the solution became pink which has marked as 'B'. M.O.3 is the said bottle. He asked A1 Ramachandran to take out the ill gotten money from PW.2 . Accordingly, A1 took out Rs.5,000/- (Rupees five thousand) only from his shirt pocket and placed it on the table. Then, PW.4 asked Muralidharan to check the currency note numbers in the said Rs.5,000/- (Rupees five thousand) only produced by A1 with that of the currency note numbers noted in Ex.P4 Mahazar. Accordingly, Muralidharan checked those numbers and informed that they tally with each other. PW.4 also recovered the shirt worn by Ramachandran, A1 at the time of occurance and dipped the shirt pocket in another Sodium Carbonate Solution and found the solution turning pink in colour. The said solution was marked as 'C' and the said bottle is M.O.4. The shirt recovered from A1 was marked as 'D' and both Veeraselvam and Muralidharan have signed in the label affixed on the shirt marked as 'D'. M.O.5 is the said shirt. He has also recovered Rs.5,000/- (Rupees five thousand) only produced by A1, which is M.O.1 series containing ten notes of Rs.500/- denomination each. All the recovered articles were sealed. M.O.6 is the specimen seal. The purse containing Rs.1,500/- (Rupees one thousand and five hundred) only and the visiting cards found in possession of A1 were returned to A1, Ramachandran. He has also

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conducted search on A2, Abdul Hameed and found Rs.46/50 and an identity card, pen and a pair of spectacles, which were also returned to Abdul Hameed, A2. He has also recovered Ex.P7 file relating to Arasan Finance from A1. Ex.P8 is the complaint regarding Arasan Finance. The witnesses have signed each and every page of Ex.P7. Both Vijayan and Veeraselvam have also narrated the incident which took place in the room of A1, which was stated in Ex.P5. He has arrested A1 under the Prevention of Corruption Act, 1988 and released A1 on the same day. He has also furnished a copy of Ex.P5 to A1. He has also conducted a search in the house of A1 at Door No.15, Krishnappa Mudali Street, Triplicane, Chennai- 5. Ex.p10 is the search list. He has also conducted a search in the house of A2 at Door No.18, Zaffur Hussain II Street, Royapettah, Chennai-14, on 10.4.1997 at about 12.35 p.m. Nothing was recovered from A2's house in the said search. Ex.p11 is the search list. Afterwards, he had handed over the file relating to this case to PW.4 Premanand and he has also sent the copy of FIR to the court and other officials.

9. PW.5 is the Joint Commissioner of income tax, Central Range-I, Chennai. Upto third week of June 1997, he was working as Deputy Commissioner of Income Tax, Range-7 and at that time, A1 Ramachandran and A2, Abdul Hameed were working as income tax officer and income tax inspector respectively and both of them were under his administrative control. The memorandum dated 23.03.1997 was forwarded by him to the income tax officer, Ward-4, regarding tax evasion petition in the cases of one Chelladurai Nadar and others. The memorandum was marked as Ex.p12. Along with Ex.P12, he has forwarded Ex.P8, an anonymous letter also. During the said time, A1 was income tax officer of City Circle IV (Survey). On receipt of anonymous complaint, the income tax office is supposed to look into the allegation and enquire the same. After the enquiry, he will initiate assessment proceedings against the person to bring home the tax net. On 29.5.1997, he forwarded tax evasion petition in the case of Paramasivam Chetty (R.S. Metal), Chennai to the income tax officer, City Ward IV, which is Ex.P13. The letter dated 29.05.1997 CBI/97-98/R was also sent to income tax officer, City Ward IV (Survey), which is Ex.P14.

10. PW.6 is the upper division clerk in the income tax department Circle No.IV. Afterwards, he was transferred to the office of the Deputy Commissioner of Income Tax, Range-7, and at that time Thiru. Nigam, PW.5, was the Deputy Commissioner of Income Tax. He would admit that the recitals in Ex.P13 were written by him and that PW.5 had sent Ex.P12 to the income tax department and at that time A1 was the income tax officer in City Circle-IV and that there was only one income tax officer (Survey) in Chennai at the relevant point of time.

11. PW.7 is the Inspector of Police, CBI/ACB/Chennai and that Crime No.RC 56A/97 was transferred too him by PW.4 Premanand. As per

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the orders of the Superintendent of Police on 29.9.1997, he examined the witnesses Muralidharan who was working as Junior Engineer CPWD and recorded his statement. He has also examined PW.3 Veeraselvam on 13.9.1997 and recorded his statement. He has examined PW.4 Premanand, Vijayan (PW.2, the complainant) and other witnesses and recorded their statements. On 7.10.1997 he has examined DSP Raghukumar, CBI and recorded his statement. He has also examined other witnesses and recorded their statements. He has sent requisition letter to the court to sent the sample M.O.2 to M.O.4 for chemical analysis under Ex.P15. Ex.P16 is Analysis report received from the Forensic Science Laboratory. After completing his investigation, he has filed charge sheet against A1 and A2 u/s. 120 B IPC r/w.7 of Prevention of Corruption Act, 1988 and under sections 13 (2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 on 8.12.1998.

12. When the incriminating circumstances were put to the accused, they denied their complexity with the crime.

13. After going through the oral and documentary evidence let in before the trial Court, the trial Judge on the basis of the evidence, has come to the conclusion that all the three charges levelled against the accused A1 and A2 have been proved beyond any reasonable doubt and accordingly the learned trial Judge convicted the accused A1 and A2 and sentenced to undergo two years R.I. And a fine of Rs.1,000/- with default sentence for each charge and further ordered the sentence to run concurrently and set of was also given under section 428 Cr.P.C.

14. Aggrieved by the findings of the learned trial Judge, the accused A1 and A2 have preferred this appeal.

15. Now the point for determination in this appeal is whether the conviction and sentence awarded by the trial court against A1 and A2 under section 120 B IPC r/w.7 of Prevention of Corruption Act, 1988 and under sections 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 are liable to be set aside for the reasons stated in the memorandum of appeal?

16. The Point:-

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The learned senior counsel appearing for the appellants would contend that the charges levelled against A2 has not been proved beyond any reasonable doubt as held by the learned trial judge. The learned senior counsel would focussed the attention of this court to Ex.P3 wherein only A1's name has been mentioned with his initial as B.Ramachandran. But, A2's name was not referred to with his initial but he was referred only as Thiru. Abdul Hameed. Whereas in Ex.P9, FIR, which was registered by PW.4, the Inspector of Police, Thiru. Premanand, the accused name have been entered with initials

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i.e. B. Ramachandran(A1) and S.S.Abdul Hameed(A2). The learned senior counsel would contend that only on the basis of Ex.P3, complaint, FIR, Ex.P9 was registered by PW.4 and it is not explained by the prosecution and from where they got the initial for A2, which is not found in Ex.P3. Yet another point which glares against the case of the prosecution as far as A2 is concerned is that during the trap, according to the evidence of PW.2 and PW.3 , when they went inside the office room of A1, A1 alone was there, demanding the bribe amount. A2 entered into the room of A1 only after the trap was over. It is pertinent to note that nothing was recovered from A2 in recovery mahazar. The only allegation under Ex.P3, complaint is that to close the anonymous complaint received under Ex.P8 against the evasion of tax by the Arasan Finance Company run by PW.2 Vijayan, A1 being the income tax officer, who is dealing with the file under Ex.P8 complaint against the said finance company of PW.2, to close the said file, has demanded illegal gratification of Rs.12,000/- (Rupees twelve thousand) only from A1 through A2, who according to the prosecution had visited the said finance company and informed the demand of A1 to PW.2. Even, the evidence of PW.2 in this regard was not corroborated by any other independent witnesses like other partners of the finance company. Under such circumstance, without any evidence against A2, the trial court has also convicted A2, which is necessarily to be interfered with by this court.

17. Let us come to A1. As far as A1 is concerned, he was arrested by trap. The evidence of PW.2, PW.3, and PW.4 will be cogent and convincing to bring home the guilt of the accused under the three charges indicated by me in the earlier paragraphs. PW.3, Veeraselvam is an independent witness belonging to Enforcement Directorate. He has no motive against A1 to depose falsehood against him. The trap has been spoken to by PW.2, PW.3 and PW.4. When incriminating circumstances were put to A1 under section 313 Cr.P.C, for question No.23 A1 would put up a new story. According to A1, on 9.9.1997 two persons entered into his room and enquired about the tax evasion petition and that they informed him that they belong to Arasan finance company and one of them told him that he is an Accountant in the said company and that the other person is Vijayan (PW.2) and he informed Vijayan that after the receipt of the notice from the department, he has to come. After both of them left his room, he went to the toilet which is 80 feet away from his office room and at that time one person was seen coming out of his room and without responding to his call, he moved towards the lift room and thereafter, he went into his room and saw currency notes on his table and after collecting those notes, he was moving towards third floor with a view to hand over the same to the Deputy Commissioner and at that time a person caught hold of his hand introducing that he is a CBI official and pushed him inside the room and at that time the currency notes fell on the ground. But the said officer threatened him to put those notes into his shirt pocket and by fear, he also

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placed those notes into his (A1) shirt pocket. So, the above said explanation given by A1 is an unbelievable story. The natural conduct of a person that too an officer of the income tax is if any suspected person enters into his room and without responding his request to stop, moving away from the place, he would have naturally raise alarm and asked his subordinates to catch hold of that person. Even after finding currency notes on his table without touching the same, A1 being an income tax officer, should have called for the assistance of the others and informed the same to his higher officials. But to our dismay A1 would say that he collected those currency notes from his table and he was about to hand over the same to the Deputy Commissioner and at that time a person introducing himself as a CBI official pushed him into his room. A1 even has not identified who is that CBI official, who pushed him inside the room. If it is so, the natural conduct of the person must be to give a complaint against the said CBI Official to the higher officials of the CBI Department that a case has been foisted against A1. So far, A1 has not preferred any complaint against any CBI officials in this regard. So, it cannot be said that the guilt against the accused under the above sections of law is not proved against him. The prosecution has with oral and documentary evidence has proved the guilt of the accused under section 7(1) and sections 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988.

18. The learned senior counsel appearing for the appellants would contend that the offence under section 7 of the Prevention of Corruption Act as well as under section 13(1)(d) are more or less similar in nature and there cannot be two convictions against A1 under section 7 of the Prevention of Corruption Act and also under section 13(1)(d) of the Prevention of Corruption Act. In support of his contention, the learned counsel for the appellants relying on AIR 2007 SC 51 (The State Vs. Parthiban), contended that demanding and receiving illegal gratification is an act against a public servant which constitute an offence both under Section 7 and Section 13(1)(d) of the Prevention of Corruption Act and that it has been held in the said dictum that an offence being single transaction but fall under two different section the offender cannot be liable for double penalty. The observation in the above said dictum at para 9 runs as follows:-

> "Every acceptance of illegal gratification whether preceded by a demand or not would be covered by Section 7 of the Act. But if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under section 13(1)(d) of the Act. The act alleged against the respondent, of demanding and receiving illegal gratification constitutes an offence both under Section 7 and

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> under Section 13(1)(d) of the Act. The offence being a single transaction, but falling under two different Sections, the offender cannot be liable for double penalty. But the High Court committed an error in holding that a single act of receiving an illegal gratification, where there was demand and acceptance, cannot be an offence both under Section 7 and under Section 13(1)(d) of the Act. As the offence is one which falls under two different sections providing different punishments, the offender should not be punished with a more severe punishment than the court could award to the person for any one of the two offences. In this case, minimum punishment under Section 7 is six months and the minimum punishment under Section 13(1)(d) is one year. If an offence falls under both Sections 7 and 13(1)(d) and the court wants to award only the minimums punishment, then the punishment would be one year."

For this proposition of law there is no contra ratio-decidendi produced by the learned Special Public Prosecutor. Section 7 of the Prevention of Corruption Act,1988 deals with public servant taking gratification other than legal remuneration in respect of an official Act. Section 13(1)(d) of the said Act also deals with the criminal misconduct by a public servant by means of corrupt or illegal means, obtains for himself of for any other person any valuable thing or pecuniary advantage; or by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest. So as observed in the above said dictum both the offence under Section 7 of the Prevention of Corruption Act and the offence under Section 13(1)(d) of the said Act are one and the same ie. a public servant receiving illegal gratification for performing his official function. The learned trial judge has convicted the accused A1 both under section 7 and also under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act,1988 to undergo two years RI under each of the above said sections and also levied separate fine of Rs.1000/- under each of the above said sections of law, which is illegal in view of the above said dictum of the Honourable Apex Court. So A1 can be convicted only under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, and the conviction and sentence by the trial Court under Section 7 of the Prevention of Corruption Act, 1988 is liable to be set aside. A1 is liable to be punished only under section 13(2) r/w.13(1)(d) of the Prevention of Corruption Act. The point is answered accordingly.

19. In the result, the appeal is allowed in part. The

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conviction and sentence against A2 in C.C.No.41 of 1998 on the file of the Principal Special Judge for CBI Cases, Chennai, is set aside and he is acquitted from all the charges levelled against him. As far as A1 is concerned the conviction and sentence by the trial court under Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988, is confirmed and sentenced to under go one year R.I instead of two years and as far as fine against A1 is concerned it is to be sustained in respect of one count i.e under section 13(2) r/w. 13(1)(d). The conviction and sentence against A1 under Section 120 B r/w. 7 of the Prevention of Corruption Act, 1988 is set aside. The fine imposed under section 120 B IPC r/w. 7 of the Prevention of Corruption Act is liable to be returned to A1. A2 is entitled to get back the entire fine imposed against him. The trial court is directed to secure A1 to undergo the unexpended portion of the sentence. The bail bond against A2 stands cancelled.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

mra

To,

1. The Principal Special Judge for CBI Cases, Chennai.

2. The Inspector of Police,
Special Police Establishment
Central Bureau of Investigation,
Anti-Corruption Branch,
Chennai.

3. The Special Public Prosecutor, Chennai.

+2ccs to Mr.V.Krishnakumar,Advocate Sr 18442

MJ (CO)
km/29.3.

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